



DELTA STEWARDSHIP COUNCIL

A California State Agency

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December 6, 2012

Jeffrey Cavanaugh
GreenLeaf Conservation and Mitigation Services
Via Email: jeff-cavanaugh@hotmail.com

Chair
Phil Isenberg

Members
Randy Fiorini
Gloria Gray
Patrick Johnston
Hank Nordhoff
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Executive Officer
Christopher M. Knopp

Dear Mr. Cavanaugh:

DSC Chair Phil Isenberg, Acting Deputy Director Cindy Messer, and I appreciated the opportunity to meet with former State Assembly member and Congressman Bill Baker, Brian Hansen of the U.S. Fish and Wildlife Service (FWS), Barbara Price of PK Consultants Inc., and you on November 20, 2012, to discuss the proposed Mallard Farms Conservation Bank in the context of the Delta Plan and consistency requirements.

As you know, the Delta Plan is nearing the final stages of completion. Once it is adopted and its policies take effect as state regulations (anticipated early Summer 2013), a local or state agency that proposes to fund, carry out, or approve a project that it determines meets the definition of a "covered action" (see Water Code sec. 85057.5) will have to certify with the Council consistency with the Delta Plan prior to implementation. The Council has jurisdiction to hear appeals only with regard to consistency certifications that are filed with it. If your project has not been fully approved and permitted when the Delta Plan's regulations become effective, the likely agency to make the "covered action" determination and, if necessary, certify consistency with the Delta Plan, would be the San Francisco Bay Conservation and Development Commission (BCDC).

We were pleased to learn more about your plans to restore approximately 700 acres in the Suisun Marsh to tidal marsh, an action that is recommended in the Draft Delta Plan (ER R1, Prioritize and Implement Projects that Restore Delta Habitat).

As we discussed, the Draft Delta Plan (G P1, Detailed Findings to Establish Consistency with the Delta Plan) requires restoration projects to have an adaptive management plan and to document access to adequate resources to implement the adaptive management process. We heard from Mr. Hansen that

- Adaptive management measures will be described in the bank enabling instrument;
- Annual reports will be required;
- FWS will enforce performance standards; and
- A portion of the funds generated by the sale of mitigation credits will be set aside as an endowment to fund monitoring and adaptive management.

We appreciated learning from Mr. Hansen about the mitigation bank enabling instrument for your property that FWS is developing under Section 7 of the Endangered Species Act. We understood from the discussion that FWS does not usually create mitigation banks on properties unless there is a threat of development. Mr. Hansen explained that, while your property is protected from development by the Suisun Marsh Preservation Act, it could be managed as a duck club indefinitely. Instead, through the sale of mitigation credits, you and your

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

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Page 2 of 2


partners intend to raise funds to restore the site to tidal aquatic habitat in an area that is highly valuable for the endangered Delta smelt. The project is also intended to benefit five other threatened and endangered fish species. We learned that FWS will handle the credit sales and accounting process.

We heard from Mr. Hansen that the National Marine Fisheries Service is likely to sign onto the bank for their listed fish species and sale of credits for those species will also be handled through the same Section 7 process. The California Department of Fish and Game (DFG) has suspended its program to establish mitigation banks, but, in the future, DFG may agree to accept credits from banks established by others.

Your prospectus states that Mallard Farms Conservation Bank will provide habitat mitigation needed for the Bay Delta Conservation Plan. However, we now understand that the sale of credits will be primarily approved for Section 7 purposes through FWS's delta smelt programmatic biological opinion with the U.S. Army Corps of Engineers. Any other sales will be reviewed on a case-by-case basis to determine whether they meet the criteria.

Thanks again for the opportunity to discuss your project. Please let me know if there are any errors in this summary of our discussion, and feel free to contact me with any questions you may have.

Sincerely,



Jessica Davenport
Senior Planner

cc: Phil Isenberg, Chair, DSC
DSC Council Members
Chris Knopp, Executive Officer
Dan Ray, Chief Deputy Executive Officer
Cindy Messer, Acting Deputy Director, Delta Plan
Brian Hansen, U.S. Fish and Wildlife Service
Bill Baker
Barbara Price, PK Consultants, Inc.
Carl Wilcox, DFG
Joe LaClair, Chief Planner, BCDC
Bob Batha, Chief of Permits, BCDC